

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA**

In the Matter of:)	
)	R9-2001-07
Wildflower Energy LP)	
)	Administrative Order on Consent
Larkspur Energy Facility)	42 U.S.C. §7413(a)(1), (4)
_____)	

I. Findings of Fact:

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed a State of Emergency due to the shortage of electricity in California and on February 8, 2001, issued Executive Orders (the “Executive Orders”), directing the California regulatory authorities to implement numerous actions designed to increase the generation of electricity in California;

WHEREAS, Executive Order D-28-01 signed on March 8, 2001, directed the California Energy Commission (“CEC”) to expedite the processing of applications for power plants that can be on line by September 30, 2001;

WHEREAS, Wildflower Energy LP (“Wildflower”) filed an emergency application for certification with the California Energy Commission on March 8, 2001 for the Larkspur Energy Facility, a 90 MW simple cycle dual fuel power plant consisting of two GE LM6000 gas turbine engines to be located at the corner of Harvest Road and Otay Mesa Road in the City of San Diego, San Diego County (“Larkspur Energy Facility”);

WHEREAS, in March 2001, Wildflower filed an application for a New Source Review

(“NSR”) Authority To Construct Permit (“ATC”) from the San Diego County Air Pollution Control District (“SDAPCD”) to allow the construction and operation of the Larkspur Energy Facility;

WHEREAS, on March 21, 2001, the SDAPCD issued a notice of intent to issue an ATC for the Larkspur Energy Facility, which initiates a 30-day public comment period;

WHEREAS, the proposed ATC requires the Larkspur Energy Facility to install and operate a Selective Catalytic Reduction (“SCR”) pollution control system and to limit its emissions of oxides of nitrogen (“NOX”) to a concentration of 5 ppm or lower, and to a rolling 12 month limit of less than 50 tons per year (“tpy”);

WHEREAS, on April 4, 2001, the CEC certified the Larkspur Energy Facility;

WHEREAS, Wildflower has indicated that the CEC has included conditions for the Larkspur Energy Facility to be on line by the target date of July 5, 2001, and Wildflower has represented that it must begin actual construction on the Larkspur Energy Facility immediately in order to meet the date of July 5, 2001;

WHEREAS, the Clean Air Act, 42 U.S.C. § 7401 et seq., as implemented by 40 C.F.R. §51.160-165, and the SDAPCD state implementation plan (“SIP”), require that “[a]ny person building, erecting, altering or replacing any article, machine, equipment or other contrivance, the use of which may cause the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall first obtain written authorization for such construction from the Air Pollution Control Officer.” SDAPCD Regulation II, Rule 10;

WHEREAS, the Larkspur Energy Facility is subject to the federal and state NSR permitting provisions discussed above;

WHEREAS, the SDAPCD will not be able to issue a final ATC that fully complies with

the NSR permitting provisions of the SIP to Wildflower until after April 20, 2001;

WHEREAS, California has indicated that construction of the Larkspur Energy Facility will help reduce blackouts and other adverse consequences of the energy supply emergency in the state, as demonstrated in the CEC decision to certify the Larkspur Energy Facility;

WHEREAS, the Larkspur Energy Facility is not allowed to commence operation under this Order so that the Facility will not emit any pollutants prior to receiving a final ATC,

WHEREAS, the United States Environmental Protection Agency, Region 9 (“EPA”) California Air Resources Board (“CARB”), and Wildflower (collectively designated as the “Parties”) agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Wildflower represents that its purpose in entering into this Order and beginning actual construction of the Larkspur Energy Facility before receiving an ATC Permit is to assist the State of California in meeting the Governor’s objective to provide additional electricity for California.

NOW, THEREFORE, the Parties agree that:

II. Definitions

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder, and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. “LAER/CA-BACT” shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R. § 51.165(a)(1)(xiii), and California BACT as defined in SDAPCD Rule 20.1.

2. “Day” or “day” shall mean a calendar day;

3. “Effective Date” shall mean the last date this Order was signed by the Parties;

4. “Effective Period” shall mean the period starting the Effective Date and ending the Termination Date;

5. “Wildflower” shall mean Wildflower Energy LP and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

6. “Order” shall mean this Administrative Order on Consent.

III. Conclusions of Law:

1. Authority to Issue Order

EPA has the authority to enter into this Order pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Section 113(a)(1), (4) grants the Administrator of EPA the authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate notice of EPA’s allegation that Wildflower will be in violation of the SIP if it begins actual construction of the Larkspur Energy Facility before Wildflower receives its final ATC. Wildflower has not admitted that it is in violation of any requirement of the Act or SIP.

2. Applicability and Binding Effect

This Order shall apply to and be binding upon the EPA, CARB and Wildflower, its successors and assigns, and its officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in FRC P. 65(d).

During the Effective Period of this Order, Wildflower shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of

ownership of any portion of the Larkspur Energy Facility, any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Larkspur Energy Facility.

Wildflower shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Larkspur Energy Facility upon acceptance by the transferee of the terms and conditions of this Order. Simultaneously with such notice, Wildflower shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Wildflower shall not be released from the obligations or liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

IV. Order To Comply:

Pursuant to Section 113(a)(1), (4) of the Act, 42 U.S.C. §7413(a)(1), (4), the Director of the Air Division, Region 9, hereby issues this Order requiring Wildflower to comply with the following terms and conditions while this Order is in effect:

1. Any construction of the Larkspur Energy Facility undertaken during the Effective Period of this Order shall be consistent with the draft ATC prepared by the SDAPCD and noticed for public comment on March 21, 2001, including but not limited to installation of SCR to satisfy a NOX concentration limit of 5 ppm;
2. The Larkspur Energy Facility shall be constructed in a manner which will ensure that its operation shall not result in NOX emissions greater than 50 tpy on a 12 month rolling limit;
3. Wildflower shall notify EPA and CARB within five business days of its receipt of a final ATC Permit for the Larkspur Energy Facility from the SDAPCD.

V. General Provisions:

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

Director, Air Division
U. S. E. P. A.
75 Hawthorne Street (AIR-1)
San Francisco, California 94105

As to Wildflower:

John D. Jones, Vice President
Wildflower Energy LP
909 Fannin, Ste. 2222
Houston, Texas 77010

As to CARB:

Kathleen Walsh, General Counsel
Air Resources Board, Office of Legal Affairs
P.O. Box 2815
Sacramento, California 95812

VI. Copies of Order:

This Order has been issued to John D. Jones, Vice President, Wildflower Energy LP. Copies of this Order have also been sent to Michael Carroll, Counsel for Wildflower, Terry Dutton, District Counsel, SDAPCD, and to Kathleen Walsh, Counsel for the California Air Resources Board.

VII. Effect of Order:

The entry of this Order shall not constitute an admission by Wildflower of any violation alleged herein nor of any statute or rule.

VIII. Effective Date and Termination of this Order:

The Termination Date of this Order shall be (1) issuance of a final ATC to Wildflower for the Larkspur Energy Facility and expiration of any applicable administrative appeal period, (2) failure of Wildflower to comply with any term or condition of its application for an ATC and the District's proposed ATC, or (3) failure to comply with any term of this Order. In no event shall the Termination Date be later than four months from the Effective Date of this Order.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if an imminent and substantial endangerment to the public health, welfare or the environment occurs. This Order shall terminate immediately upon receipt by Wildflower of the notice of termination.

IX. Enforcement:

Any violation of this Order may result in a civil judicial action for an injunction and civil penalties up to \$27,500 per day per violation, 42 U.S.C. §7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. §7413(c).

X. Opportunity for Conference and Effective Date:

Section 113(a)(4) provides that this Order shall not take effect until Wildflower has had an opportunity to confer with EPA regarding the alleged violations. Wildflower's signature in the space provided below shall constitute its acknowledgment that it has had sufficient opportunity to confer with EPA prior to issuance of the Order. Wildflower's signature also constitutes its agreement to comply with Section IV above (Order to Comply).

The undersigned representatives of EPA and Wildflower each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

DATE:

U.S.E.P.A.

April 10, 2001

_____/s/_____
Jack Broadbent, Director
Air Division, Region 9

Acknowledged and Agreed:

DATE:

WILDFLOWER ENERGY LP

_____/s/_____
By: John D. Jones, Vice President

DATE:

CALIFORNIA AIR RESOURCES BOARD

_____/s/_____
Mike Kenny, Executive Officer